correct on the facts, the implication of the trust fund theory is open to criticism.

The capital stock of a corporation is the basis of its credit and is a substitute for the individual liability of its stockholders. Ordinarily no trust relation exists towards creditors, and the corporation holds its property in the same respect as does an individual debtor; in this relation a corporation is an entity as much distinct from its stockholders as from its creditors. *Hollins* v. *Breirfield, etc., Co.,* 150 U. S. 371; *Hospes* v. *Northwestern, etc., Co.,* 48 Minn. 174, 50 N. W. 1117; *Southworth* v. *Morgan,* 205 N. Y. 293, 98 N. E. 490. For this reason, the transfer by a corporation of all its property for a consideration which inures, not to itself, but to its stockholders, constitutes a fraudulent voluntary conveyance which may be set aside at the suit of its creditors; the latter can not be compelled to go against the consideration in the hands of the stockholders, but may continue to look to their original security—the property of their debtor. The gist of the action is fraud. *Wabash, St. Louis & Pac. R.* v. *Ham,* 114 U. S. 587.

But when a corporation becomes insolvent and its assets are being administered by a court of equity, then a trust does arise in favor of creditors in the limited sense that their debts must be paid before the stockholders can claim any interest. *Graham* v. *Railway Co.,* 102 U. S. 148; COOK, CORPORATIONS, 7 ed., § 9.

CRIMINAL LAW—ARRAIGNMENT AND PLEA—NECESSITY.—The record in a felony trial failed to disclose the arraignment and plea of the defendant. Defendant entered his objection after verdict. *Held,* the failure of the record to disclose arraignment and plea is a fatal error. *Burroughs* v. *State* (Neb.), 143 N. W. 450.

There is conflict among the decisions involving the question in the principal case. One view is that arraignment and plea is merely a formal requirement which is impliedly waived by the defendant's going to trial on the merits without objection. *People* v. *Osterhout,* 34 Hun. (N. Y.) 260; *State* v. *Straub,* 16 Wash. 111, 47 Pac. 227; *State* v. *Hayes,* 67 Iowa 27, 24 N. W. 575. This view, however, has not been received with much favor, and is, perhaps, dependent upon statutes regulating criminal trials in those states which hold this doctrine.

A respectable number of cases, while not holding that arraignment and plea is a merely formal requirement, lay down the rule that arraignment and plea is waived by the defendant's going to trial without objection. *Hack* v. *State,* 141 Wis. 346, 124 N. W. 492; *People* v. *Weeks,* 165 Mich. 362, 130 N. W. 697. Since an issue is essential to a valid trial, and since there can be no issue until a plea is entered, it is difficult to see how these decisions can be upheld on principle.

The weight of authority is in line with the decision in the principal case in holding that arraignment and plea is a matter of substance, that omission of arraignment and plea is a denial of due process of law, and that the failure of the prisoner to object before verdict is not a waiver. This is the doctrine of the United States Supreme Court. *Crain* v. *U. S.,* 162 U. S. 625 (where the objection was first made in the appellate court); *Bowen* v. *State,* 108 Ind. 411, 9 N. E. 378. This doctrine has been

extended to misdemeanor cases. *Shelp* v. *U. S.*, 26 C. C. A. 570, 81 Fed. 694. The logical result of this holding is that a state cannot enact a statute dispensing with arraignment and plea in a criminal trial. *Hack* v. *State, supra* (*dictum*).

The state has an interest in the life and liberty of its citizens. It is to the interest of the state that one charged with crime should be given a trial in which all the essentials of due process of law should appear. Hence that which the law makes essential to a valid trial cannot be dispensed with or affected by the consent of the accused. *Hopt* v. *Utah*, 110 U. S. 574. It has been held that arraignment and plea is essential to a valid trial and comes within the above rule. *State* v. *Walton*, 50 Ore. 142, 91 Pac. 490.

The decision in the principal case would seem to be sound in theory and reason. To hold that the accused has impliedly waived his right to arraignment and plea by failure to object before verdict would be to deprive him of his constitutional rights by a mere implication.

EXEMPTION OF NONRESIDENTS FROM SERVICE OF CIVIL PROCESS—PARTIES—WITNESSES—ATTORNEYS.—*Held*, a nonresident and his attorney within the state for the purpose of bringing a suit are exempt from service of civil process in another action. *Read* v. *Neff*, 207 Fed. 890.

Nonresident parties are, by the weight of authority, held exempt from the service of civil process, whether or not there is detention of the person. *Halsey* v. *Stewart*, 4 N. J. L. 426; *Hale* v. *Wharton*, 73 Fed. 739; *Long* v. *Hawken*, 114 Md. 234, 79 Atl. 190. For in either case a party is distracted from pressing his suit, and on the ground of public policy he should be unfettered by service of process in another action. *Halsey* v. *Stewart, supra; Murray* v. *Wilcox*, 122 Iowa 188, 97 N. W. 1087, 101 Am. St. Rep. 263. The exemption applies to nonresident parties upon any judicial proceeding. *Kinne* v. *Lant*, 68 Fed. 436; *Matthews* v. *Tufts*, 87 N. Y. 568. The exemption covers a reasonable time before and after the proceeding. *Kinne* v. *Lant, supra; Wilson* v. *Donaldson*, 117 Ind. 356, 20 N. E. 250. If the nonresident party comes within the state on other business also he is not exempt. *Finucane* v. *Warner*, 194 N. Y. 160, 86 N. E. 1118. In one or two states a distinction has been made between nonresident plaintiffs and nonresident defendants, holding the latter exempt because under greater compulsion. *Bishop* v. *Vose*, 27 Conn. 1; *Wilson Sewing Machine Co.* v. *Wilson*, 51 Conn. 595, 22 Fed. 803. This distinction would seem unsound, for in either case the party is compelled to elect between entering the state and foregoing his rights.

The immunity of nonresident witnesses from service of civil process is quite generally recognized. *Capwell* v. *Sipe*, 17 R. I. 475, 33 Am. St. Rep. 890. To hold otherwise would make it difficult to secure attendance and would paralyze the functions of the court.

This immunity extends to nonresident attorneys within the state in the interests of a client, as they are officers of the court. *Central Trust Co.* v. *Milwaukee St. Ry. Co.*, 74 Fed. 442.

INJUNCTION—TRESPASS—ENCROACHMENT OF WALL.—The defendant erected a building adjoining the plaintiff's land. In the course of con-